

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSHUA DWANE BACON,
Plaintiff, *pro se*,

v.

LUZERNE COUNTY, et al.,
Defendants,

No. 3:23-CV-01699-RDM-CA

[JUDGE MARIANI]

Filed via U.S. Mail on August 5, 2024

MOTION FOR LEAVE TO AMEND COMPLAINT DUE TO A POTENTIAL
CONSTITUTIONAL AMENDMENT ISSUE

Plaintiff, JOSHUA DWANE BACON, acting *pro se*, respectfully comes before this Court and represents the following, in an attempt to resolve a potential error relating to the claims in his First Amended Complaint:

1. On June 3, 2024, Plaintiff filed his First Amended Complaint ("FAC") which was not opposed with a Motion to Dismiss by the Defendants' Counsel.
2. In Plaintiff's original complaint, he noted that he was sentenced on December 3, 2021 (page 2 of Original Complaint).
3. Because the claims in this complaint occurred prior to this date, this means that the **Plaintiff was a pre-trial detainee, not a convicted and sentenced prisoner.**
4. Because Plaintiff was a pre-trial detainee and not a convicted and sentenced prisoner at this time, it appears that the Eighth Amendment *failure to protect* claims may need to be instead brought as Fourteenth Amendment *due process* violations instead.
5. Plaintiff is a legal novice and is acting *pro se*. As such, he does not have the proper information to determine if this issue needs to be corrected or not. Plaintiff is asking the court to provide guidance on whether or not an Eighth Amendment *failure to protect* claim can be brought when the Plaintiff was actually a pre-trial detainee, as opposed to a convicted and sentenced prisoner.
6. Should this correction be required, Plaintiff requests leave of the court to file a Second Amended Complaint.

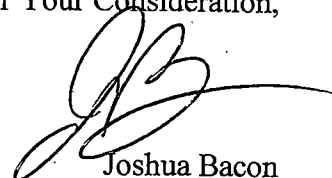
FILED
SCRANTON

AUG 08 2024



DEPUTY CLERK

Respectfully Submitted For Your Consideration,


Joshua Bacon

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSHUA DWANE BACON,

Plaintiff, *pro se*,

v.

LUZERNE COUNTY, et al.,

Defendants,

| No. 3:23-CV-01699-RDM-CA

| [JUDGE MARIANI]

| Filed via U.S. Mail on August 5, 2024

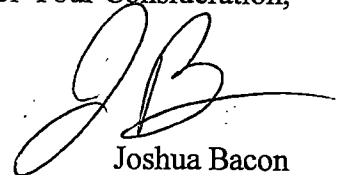
CERTIFICATE OF SERVICE

I, JOSHUA DWANE BACON, hereby certify that on the 5th day of August, 2024, I served a copy of the foregoing **MOTION FOR LEAVE TO AMEND COMPLAINT DUE TO A POTENTIAL CONSTITUTIONAL AMENDMENT ISSUE**, upon the persons indicated below:

United States District Court
For the Middle District of Pennsylvania
235 N. Washington Ave.
#1148
Scranton, PA 18501

Dougherty, Levanthal, & Price, LLP **WAS NOT SERVED** with a copy of this Motion.
The Court is asked to serve a copy of this Motion upon the Defendants' Counsel electronically.

Respectfully Submitted For Your Consideration,


Joshua Bacon

Smart Communications/PADOC

SCI-CHS

Name *Bacon*

Number *QNG521*

PO Box 33028

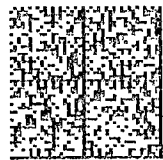
St Petersburg FL 33733

RECEIVED
SCRANTON

AUG 08 2024

PER *[Signature]*
DEPUTY CLERK

US POSTAGE PAID PITNEY BOWES
ZIP 19013 \$ 000.69⁰
02 4W
0000359303 AUG 05 2024



United States District Court
Middle District of PA
235 N. Washington Ave
#4415
Scranton PA 18501

1850135004 C770